

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1694 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

SUHASINI GAJANAND DANGE

Versus

GAJANAND SHANKARAO DANGE

Appearance:

UNSERVED for Petitioner
MR RS PANDYA for Respondent No. 1
MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 04/07/97

ORAL JUDGEMENT

The petition is filed by the petitioner-wife who has approached the Court of Chief Judicial Magistrate, Baroda, by way of Miscellaneous Application No. 137 of 1988, seeking the order of maintenance in her favour under Section 125 of the Code of Criminal Procedure. After recording the evidence, by judgment dated 26th

April 1990, the 1d. Magistrate was pleased to dismiss the said application. The petitioner, therefore, carried the matter before the 1d. Sessions Judge, Baroda, by way of Appeal No. 69 of 1990. That appeal also came to be dismissed by the 1d. Addl. Sessions Judge, under his order dated 1st January 1991. Being aggrieved by this, the petitioner has approached this Court, by way of this petition.

Initially, when the matter was filed, the petitioner was represented by 1d. Advocate Mr. A.G. Uraizee, who has later on, joined the State Judiciary and, therefore, the office was directed to issue notice to the petitioner. The attempt has failed because, at the address given in the petition when the service was sought to be effected, the petitioner was not found residing there.

I have gone through both the orders and I find that, on the basis of the material before the 1d. Chief Judicial Magistrate, the request of maintenance has been rejected. There is only oral testimony of the petitioner wife and the respondent husband. According to wife, she was ill-treated by the husband and, therefore, leaving the matrimonial home, she had gone to stay with her brother. Neither the brother nor any of the family member of the petitioner has come forward in support of her case of cruelty. On the contrary, according to the husband, the wife was not discharging her domestic duties properly and instead of that, though a Hindu, she was passing her time in offering prayers as a devoted Muslim woman, performing "Namaz" and was in the habit of visiting "Dargah" of Pir Shahensha and was veiling away her time by sitting idle.

In the course of the trial before the 1d. Chief Judicial Magistrate, the husband had offered to take back the wife, but she insistently refused the offer only on the ground that, she no longer trusts the husband. Finding this to be a baseless refusal, the 1d. Chief Judicial Magistrate has proceeded to reject the application.

Needless to say, based on this very material, the 1d. Addl. Sessions Judge, after hearing both the sides, has also expressed himself to be in agreement with the 1d. Chief Judicial Magistrate.

The situation remains that, on record, there are concurrent findings of the Courts below. I am aware of the fact that, this being a Special Criminal Application,

this Court can also, if necessary, evaluate the evidence on its own, however, should also not forget that, though described as Special Criminal Application, it is essentially under Article 227 of the Constitution of India and in the nature of a supervisory jurisdiction. On examination, therefore, if the view taken by the Courts below is found to be reasonable and in accordance with the material on record, the same is not required to be interfered with. The result, therefore, is that the petition fails. It stands disposed of accordingly. Rule is discharged.

sreeram.